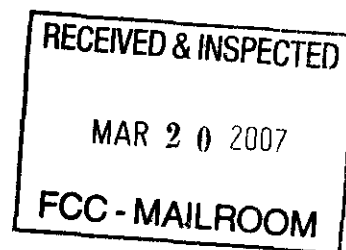


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Empowering Education Through Technology

Federal Communications Commission

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of

WEST CONTRA COSTA UNIFIED SCHOOL

DISTRICT, RICHMOND, CA

Schools and Libraries Universal Service
Support Mechanism

File No. SLD 144237

CC Docket No. 02-6
CC Docket No. 96-45

REQUEST FOR REVIEW OF THE DECISION AND WAIVER OF THE
DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR BY
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, RICHMOND, CA

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Federal Communications Commission

I. INTRODUCTION

1. The West Contra Costa Unified School District, (the "District") appeals the decision of the Universal Service Administrative Company ("USAC") concerning the schools and libraries universal service support mechanism (also known as the E-rate program) denial of funding due to certain clerical or ministerial errors during the application, to wit, a failure to provide to USAC a timely response to questions posed during the review period.
2. The District believes that special circumstances exist to justify a waiver of the Commission's rules, and, accordingly files this Request for Review and Waiver of the administrative rules applied to this case.
3. The District requests that the Commission review the decision of USAC denying funding on a Form 471 application because a ministerial error lead USAC to decide the District had not provided information in a timely manner.

II. BACKGROUND

1. The District completed and filed several E-rate application Form 471's with USAC for the 2006 funding year. During the PIA process, the SLD attempted to contact the District's primary contact, Emily Vaughn-Henry, for additional information on one particular Form 471 application (532568) with two individual funding requests (1487034 and 1487054). Ms. Vaughn-Henry, the District's chief technology officer, was inundated with emails and faxes during that time frame and inadvertently failed to provide the information to the USAC.
2. The District was notified that USAC had denied funding to the District. The District promptly appealed to USAC. USAC stated that the District had failed to provide the requested information in a timely manner and that

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in their appeal; they had failed to show that the USAC had erred in its denial.

III. DECISIONS BY THE COMMISSION ON APPEALS

1. As noted in the decision published in the Bishop Perry Middle School, New Orleans, LA appeal, SLD # 487170, the "Commission may waive any provision of its rules on its own motion and for good cause shown." (47 C.F.R. §1.3.) Additionally, a "rule may be waived where the particular facts make strict compliance inconsistent with the public interest." *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).
2. In Bishop Perry Middle School, New Orleans, LA, the Commission stated as follows:

As we recently noted, many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated, resulting in a significant number of applications for E-rate support being denied for ministerial, clerical or procedural errors. We find that the actions we take here to provide relief from these types of errors in the application process will promote the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the Act), by helping to ensure that eligible schools and libraries actually obtain access to discounted telecommunications and information services. In particular, we believe that by directing USAC to modify certain application processing procedures and granting a limited waiver of our application filing rules, we will provide for a more effective application processing system that will ensure eligible schools and libraries will be able to realize the intended benefits of the E-rate program as we consider additional steps to reform and improve the E-rate program. The Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.

As of the effective date of this Order, we require USAC to provide all E-rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Form 470 or FCC Form 471, and an additional opportunity to file the required certifications. Specifically, USAC shall inform applicants promptly in writing of any and all ministerial or clerical errors that are detected in their applications, along with a clear and specific explanation of how the applicant can remedy those errors. USAC shall also inform applications promptly in writing of any missing

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or incomplete certifications. Applicants shall have 15 calendar days from the date of receipt of notice in writing by USAC to amend or re-file their FCC Form 470, FCC Form 471 or associated certifications. USAC shall apply this directive to all pending applications and appeals even if such applications or appeals are no longer within the filing window. The 15-day period is limited enough to ensure that funding decisions are not unreasonably delayed for E-rate applicants and should be sufficient time to correct truly unintentional ministerial and clerical errors. The opportunity for applicants to amend their filings to cure minor errors will also improve the efficiency and effectiveness of the Fund. Because applicants who are eligible for funding will now receive funding where previously it was denied for minor errors, we will ensure that funding is distributed first to the applicants who are determined by our rules to be most in need of funding.

3. In the Request for Review filed by Glendale Unified School District, File No. SLD-143548 decided on February 1, 2006, the Commission once again held that "The Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule."
4. On March 9th, the FCC released the Academy for Academic Excellence appeal decision (DA 07-1180) granting waivers to 44 applicants. The Order indicates that waivers were granted to entities who failed to file in a timely manner "due to circumstances beyond their control." The standard for such excuses is broad and includes circumstances such as:
 - a. Personal staff emergencies such as illness of responsible individuals (or their relatives)
 - b. Staff "misunderstandings" or other inadvertent failures
 - c. Vague and unclear rules and instructions
 - d. School reorganizations

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- e. Inclement weather
- f. Technical system problems

IV. DISCUSSION

1. The District believes that under the circumstances described above, and pursuant to the applicable rulings by the FCC, the failure of the primary contact person to respond to the SLD within 15 days was a *ministerial error*. In fact, the District had a secondary contact person listed on their application and had the SLD contacted that person, the information would have been promptly provided.
2. District relies on the order in the *Bishop Perry* case, cited *supra*, that "USAC [is required] to provide all E-rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Form 470 or FCC Form 471, and to provide applicants with the opportunity "to amend their filings to cure minor errors will also improve the efficiency and effectiveness of the Fund. Because applicants who are eligible for funding will now receive funding where previously it was denied for minor errors, we will ensure that funding is distributed first to the applicants who are determined by our rules to be most in need of funding." In the *Bishop Perry* case, the Commission reviewed the appeals of numerous districts that had made a number of errors in the submission of their applications for E-rate funding. The errors made were similar to the one made by the District in the instant case. The District had a secondary contact person listed on their application and the requested information would have been provided promptly had the SLD made an effort to contact the secondary contact person. Had the SLD alerted the District to the problem of missing information, it could have been corrected immediately.
3. District also relies on the decision in the *Glendale Unified School District* appeal as cited above. In *Glendale*, the applicant filed a Form 471 which

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showed an incorrect service start date. When the district submitted a corrected form to the SLD, it was not accepted as it was deemed new information. The Commission granted the district's Request for Review and Waiver, stating that "We find that although Glendale committed an unintentional, clerical error when it listed the incorrect service start date on its FCC Form 486, it adhered to the core program requirements. As we recently noted, the E-rate program is fraught with complexity from the perspective of beneficiaries, resulting in a significant number of applications for E-rate support being denied for ministerial or clerical errors. We find that the action we take here promotes the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the "Act"), by helping to ensure that Glendale obtains access to discounted telecommunications and information services." The District believes that its own clerical/ministerial error is substantially similar to the error cited in the Glendale appeal. Accordingly, the District respectfully requests that the Commission grant the District's Request for Review and Waiver.

4. In the recently published decision in the Academy for Academic Excellence appeal decision (DA 07-1180), the FCC granted waivers to 44 districts who had made errors in their submissions due to "circumstances beyond their control." West Contra Costa Unified School District believes that the facts in the Academy for Academic Excellence appeal are substantially similar to their own in that, due to circumstances beyond their control, their primary contact person failed to respond to the SLD in a timely manner and the SLD failed to attempt to contact the District's secondary contact person who could have provided the information in a timely manner.

VI. CONCLUSION

For the reasons discussed herein, the District respectfully requests the Commission grant the Request for Review and Waiver and Remand the case

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to USAC for further consideration pursuant to the E-rate rules.

All further contact should be directed to either Emily Vaughn-Henry at evhenry@weccusd.net or Kimberly Friends at kfriends@csmgconsulting.com.